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**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues Against:

Case No. S-378

JOSEPH NICHOLAS HALL
6711 Yucca Street
Los Angeles, California 90028

STATEMENT OF ISSUES

Respondent.

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Statement of Issues solely in her official capacity as the Executive Officer of the Respiratory Care Board of California (Board), Department of Consumer Affairs.

2. On or about April 27, 2006, the Board received an application for a Respiratory Care Practitioner License from Joseph Nicholas Hall (Respondent). On or about April 3, 2006, Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on September 13, 2006.

JURISDICTION

3. This Statement of Issues is brought before the Board under the authority of

1 the following laws. All section references are to the Business and Professions Code (Code) unless
2 otherwise indicated.

3 4. Section 3710 of the Code states: “The Respiratory Care Board of California,
4 hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the
5 Respiratory Care Practice Act].”

6 5. Section 3718 of the Code states: “The board shall issue, deny, suspend, and
7 revoke licenses to practice respiratory care as provided in this chapter.”

8 6. Section 3732, subdivision (b) of the Code states:
9 “The board may deny an application, or may order the issuance of a license
10 with terms and conditions, for any of the causes specified in this chapter for
11 suspension or revocation of a license, including, but not limited to, those causes
12 specified in Sections 3750, 3750.5, 3752.5, 3752.6, 3755, 3757, 3760, and 3761.”

13 7. Section 3750 of the Code states:
14 “The board may order the denial, suspension or revocation of, or the
15 imposition of probationary conditions upon, a license issued under this chapter, for
16 any of the following causes:

17 “ . . .

18 “(d) Conviction of a crime that substantially relates to the qualifications,
19 functions, or duties of a respiratory care practitioner. The record of conviction or a
20 certified copy thereof shall be conclusive evidence of the conviction.

21 “. . . .”

22 8. Section 3752 of the Code states:
23 “A plea or verdict of guilty or a conviction following a plea of nolo
24 contendere made to a charge of any offense which substantially relates to the
25 qualifications, functions, or duties of a respiratory care practitioner is deemed to be
26 a conviction within the meaning of this article. The board shall order the license
27 suspended or revoked, or may decline to issue a license, when the time for appeal
28 has elapsed, or the judgment of conviction has been affirmed on appeal or when an

1 order granting probation is made suspending the imposition of sentence, irrespective
2 of a subsequent order under Section 1203.4 of the Penal Code allowing the person
3 to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside
4 the verdict of guilty, or dismissing the accusation, information, or indictment.”

5 9. California Code of Regulations, Title 16, section 1399.370, states:

6 “For the purposes of denial, suspension, or revocation of a license, a crime
7 or act shall be considered to be substantially related to the qualifications, functions
8 or duties of a respiratory care practitioner, if it evidences present or potential
9 unfitness of a licensee to perform the functions authorized by his or her license or in
10 a manner inconsistent with the public health, safety, or welfare. Such crimes or acts
11 shall include but not be limited to those involving the following:

12 “ . . .

13 “(c) Conviction of a crime involving driving under the influence or reckless
14 driving while under the influence.

15 “”

16 COST RECOVERY

17 10. Section 3753.5, subdivision (a) of the Code states:

18 "In any order issued in resolution of a disciplinary proceeding before the
19 board, the board or the administrative law judge may direct any practitioner or
20 applicant found to have committed a violation or violations of law to pay to the
21 board a sum not to exceed the costs of the investigation and prosecution of the
22 case."

23 11. Section 3753.7 of the Code states:

24 "For purposes of the Respiratory Care Practice Act, costs of prosecution
25 shall include attorney general or other prosecuting attorney fees, expert witness fees,
26 and other administrative, filing, and service fees."

27 12. Section 3753.1, subdivision (a) of the Code states:

28 "An administrative disciplinary decision imposing terms of probation may

1 include, among other things, a requirement that the licensee-probationer pay the
2 monetary costs associated with monitoring the probation."

3 CAUSE FOR DENIAL OF APPLICATION

4 (Conviction of a Crime)

5 13. Respondent's application is subject to denial under Business and
6 Professions Code sections 3750, subdivision (d), 3752, and California Code of Regulations,
7 Title 16, section 1399.370, subdivision (c), in conjunction with Business and Professions
8 Code section 3732, subdivision (b), in that Respondent was convicted of crimes
9 substantially related to the qualifications, functions or duties of a respiratory care
10 practitioner. The circumstances are as follows:

11 March 3, 2003 Conviction

12 A. On or about February 28, 2002, in Riverside County Superior Court
13 Complaint No. SWM003352, Respondent was charged with violating the following
14 Vehicle Code sections: 23152(a), driving under the influence of alcohol, a
15 misdemeanor (Count 1); 23152(b), driving with .08% or higher blood alcohol level,
16 a misdemeanor (Count 2); 14601.1, driving with privilege suspended, a
17 misdemeanor (Count 3); and 27315(d)(1), driving with the driver/passenger not
18 restrained, a misdemeanor (Count 4), following the issuance of a Notice to Appear
19 by the California Highway Patrol on or about February 24, 2002. On or about May
20 6, 2002, an additional charge of failure to appear in accordance with a written
21 promise, in violation of Vehicle Code section 40508(a), a misdemeanor (Count 5)
22 was filed against Respondent.

23 B. On or about March 3, 2003, respondent was convicted upon his plea
24 of guilty to driving under the influence of alcohol (Count 1) and failure to appear
25 (Count 5). He was placed on probation for four years with the following terms and
26 conditions, among others: serve 95 days in county jail (with credit for 5 days), pay a
27 fine and assessment of \$1,580.00, a fee of \$110.00, and a restitution fine of
28 \$100.00. He was also ordered to complete a drinking driver program, and his

1 driving privilege was restricted for 12 months. Count 2 of the complaint was
2 stayed, and Counts 3 and 4 of the complaint were dismissed.

3 February 10, 2000 Conviction

4 C. On or about February 2, 2000, an Oceanside police officer responded
5 to a report of a serious injury accident. He observed a Honda upside down on an
6 embankment. Respondent, who was the driver of the vehicle, and two other males,
7 had sustained numerous lacerations. While speaking to Respondent, the officer
8 noticed that Respondent's breath had a strong odor of alcohol, his eyes were
9 bloodshot and watery, and his speech was slurred. The results of Respondent's
10 breath test indicated his blood alcohol level was .14%. Respondent admitted to the
11 officer he had been drinking about 5 or 6 beers. He also admitted that he had lost
12 control of his vehicle and crashed into a guardrail.

13 D. On or about February 4, 2000, in San Diego County Superior Court
14 Complaint No. CN109041, Respondent was charged with violating the following
15 Vehicle Code sections: 23153(a), driving under the influence of alcohol causing
16 injury, a misdemeanor (Count 1); 23153(b) driving with .08% or higher blood
17 alcohol level causing injury, a misdemeanor (Count 2); 23152(a) driving under the
18 influence of alcohol, a misdemeanor (Count 3); and 23152(b), driving with .08% or
19 higher blood alcohol level, a misdemeanor (Count 4).

20 E. On or about February 10, 2000, Respondent was convicted upon his
21 plea of guilty to driving with .08% or higher blood alcohol level causing injury
22 (Count 2). He was placed on probation for three years on the following terms and
23 conditions, among others: serve 3 days in county jail (with credit for 3 days), pay
24 fines and fees in the amount of \$1,622.00, pay restitution to the victims, and
25 complete a first conviction alcohol program. His driving privilege was restricted for
26 90 days. Counts 1, 3 and 4 of the complaint were dismissed.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Respiratory Care Board issue a decision:

1. Denying the application of Joseph Nicholas Hall for a Respiratory Care Practitioner License;
2. Directing Joseph Nicholas Hall to pay the Respiratory Care Board the costs of the investigation and enforcement of this case, and if placed on probation, the costs of probation monitoring;
3. Taking such other and further action as deemed necessary and proper.

DATED: March 20, 2007

Original signed by Liane Zimmerman for:
STEPHANIE NUNEZ
Executive Officer
Respiratory Care Board of California
Department of Consumer Affairs
State of California
Complainant